ATTACHMENT 9

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```
 1              UNITED STATES DISTRICT COURT

 2            NORTHERN DISTRICT OF CALIFORNIA

 3                  SAN JOSE DIVISION

 4

 5    CISCO SYSTEMS, INC.,          )
                                    )
 6              Plaintiff,          )
                                    ) Case No.
 7          vs.                     ) 5:14-cv-05344-BLF (PSG)
                                    )
 8    ARISTA NETWORKS, INC.,        )
                                    )
 9              Defendant.          )
                                    )
10    _____  )

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16      VIDEOTAPED DEPOSITION OF KEVIN C. ALMEROTH

17              San Francisco, California

18               Tuesday, June 28, 2016

19                    Volume I

20    HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY

21

22    Reported by:

      CARLA SOARES

23    CSR No. 5908

24    Job No.  2337647

25    Pages 1 - 296
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
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5 CISCO SYSTEMS, INC.,   )
)
6   Plaintiff,   )
) Case No.
7 vs.   ) 5:14-cv-05344-BLF (PSG)
)
8 ARISTA NETWORKS, INC.,   )
)
9   Defendant.   )
)
10 _____)
11
12
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14
15
16   VIDEOTAPED DEPOSITION OF KEVIN C.
17 ALMEROTH, Volume I, taken on behalf of Defendant, at
18 633 Battery Street, San Francisco, California
19 beginning at 8:34 a.m., and ending at 5:43 p.m., on
20 Tuesday, June 28, 2016, before CARLA SOARES,
21 Certified Shorthand Reporter No. 5908.
22
23
24
25

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1 APPEARANCES:
2
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21
22 ALSO PRESENT: John Black
23   Sean Grant, Video Operator
24
25   --o0o--

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9 Exhibit 1538 Opening Expert Report of Kevin   20
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12 Exhibit 1539 Rebuttal Expert Report of Kevin   75
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15 Exhibit 1540 Expert Report of John R. Black,   95
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1   REFERENCED EXHIBITS
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1   San Francisco, California
2   Tuesday, June 28, 2016
3   8:34 a.m.
4
5   P R O C E E D I N G S
6   THE VIDEO OPERATOR: Good morning. We're
7   on the record. The time is 8:34 a.m., and the date
8   is June 28th, 2016. This begins the videotaped
9   deposition of Dr. Kevin Almeroth.
10   My name is Sean Grant, here with our court   08:34:13
11   reporter, Carla Soares. We're here from Veritext
12   Legal Solutions at the request of counsel for
13   defendant.
14   This deposition is being held at Keker &
15   Van Nest LLP in San Francisco, California. The   08:34:24
16   caption of this case is Cisco Systems, Inc., versus
17   Arista Networks, Inc., Case No. 5:14-cv-05344-BLF.
18   Please note that audio- and
19   video-recording will take place unless all parties
20   have agreed to go off the record. Microphones are   08:34:45
21   sensitive and may pick up whispers, private
22   conversations, or cellular interference.
23   At this time, will counsel please identify
24   themselves and state whom they represent.
25   MR. HOLMES: Drew Holmes on behalf of   08:34:58

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1   other times I've testified under deposition. I   08:36:01
2   don't know that there's a distinction in what
3   Mr. Holmes said.
4   Q   Okay. Are you asking the court to
5   recognize you as an expert in this matter?   08:36:14
6   A   I don't know that I'd be asking the court
7   to do that, but certainly, I think my qualifications
8   justify that the court see me as an expert.
9   Q   On what subjects relevant to the opinions
10 expressed in your reports do you claim to be an   08:36:37
11 expert?
12   A   I'm not sure I understand the question. I
13 don't know that I can sit here and come up with the
14 definitive list of subjects.
15   I think on any of the subjects that I   08:36:58
16 testify about and offer opinions about, I believe
17 I'm qualified as an expert.
18   Q   Are you an expert in computer science?
19   A   I believe I am.
20   Q   Are you an expert in networking   08:37:09
21 technology?
22   A   I believe I am.
23   Q   Are you an expert in network device
24 operating systems?
25   A   I believe I am.   08:37:19

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1   Cisco, as well as the witness, from Quinn Emanuel.   08:35:00
2   MR. SILBERT: David Silbert, Keker &
3   Van Nest, on behalf of defendant Arista.
4   MR. WONG: Ryan Wong of Keker & Van Nest
5   on behalf of Arista.   08:35:11
6   THE VIDEO OPERATOR: And also present?
7   MR. BLACK: I'm John Black. I'm an expert
8   witness for Arista.
9   THE VIDEO OPERATOR: Will the certified
10 court reporter please swear in the witness.   08:35:29
11   KEVIN C. ALMEROTH,
12 having been administered an oath, was examined and
13 testified as follows:
14   EXAMINATION
15 BY MR. SILBERT: 08:35:31
16   Q   Good morning, Dr. Almeroth.
17   A   Good morning.
18   Q   A minute ago counsel for Cisco introduced
19 himself as representing Cisco and also representing
20 you in your capacity as a witness.   08:35:41
21   Is it your understanding that you're being
22 represented in your capacity as a witness today by
23 the Quinn Emanuel law firm?
24   A   I don't have an understanding that the
25 representation is any different than any of the   08:35:59

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1   Q   From -- for how many different network   08:37:24
2   device vendors have you reviewed any source code for
3   their network device operating systems?
4   MR. HOLMES: Objection. Vague.
5   THE WITNESS: Generally speaking, or just   08:37:39
6   in the conjunction -- just in conjunction with this
7   case?
8   BY MR. SILBERT:
9   Q   Well, why don't we take them one by one.
10   First, in conjunction with this case, for   08:37:47
11 how many network device vendors have you reviewed
12 any source code for their network device operating
13 systems?
14   A   Sitting here right now, I specifically
15 recall two: Cisco and Arista. There might have   08:38:04
16 been others. I just don't remember them.
17   Q   And generally speaking, for how many
18 different network device vendors have you reviewed
19 any source code for their network device operating
20 systems?   08:38:22
21   A   Maybe ten.
22   Q   Can you name them?
23   A   In addition to Cisco and Arista, I believe
24 I've reviewed source code for A10, maybe F5, 3Com.
25 Quagga is an open source so I've looked at source   08:38:49

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3 (Pages 6 - 9)

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1 your rebuttal report and your figures for the counts 11:07:56
2 of IOS commands that were copied are an
3 apples-to-apples comparison?
4   A I believe that the comparison in counts is
5 an appropriate and consistent comparison between   11:08:10
6 Cisco and Arista.
7   Q You're not willing to say apples to
8 apples?
9   A I said apples to apples before. I think
10 apples to apples is what I just answered.   11:08:20
11   Q Okay. Did you review Dr. Black's opening
12 report carefully?
13   A I did.
14   Q And in Dr. Black's report, he provides
15 data on the use of CLI elements by a number of   11:08:39
16 network device vendors, correct?
17   A I think --
18   MR. HOLMES: Objection. Vague.
19   THE WITNESS: I think his report speaks
20 for itself. I know that he had reference to some   11:08:56
21 materials about counts in his report. We can
22 certainly get it out and look at it. As well as my
23 report, I don't have his report memorized.
24 BY MR. SILBERT:
25   Q Do you recall a section in Dr. Black's   11:09:14

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1 report where he discusses a number of different   11:09:16
2 switch vendors in alphabetical order and talks about
3 their use of CLI elements in common with Cisco IOS
4 CLI?
5   A I believe he had something along those   11:09:34
6 lines. But sitting here now, the fact that it was
7 alphabetical, I don't recall.
8   So along those same lines, I don't recall
9 your characterization of what is in his report as
10 something I necessarily can agree with without   11:09:48
11 seeing it.
12   Q Do you recall that Dr. Black provided
13 exhibits to his report in which he provided data on
14 use of CLI elements in IOS by other network switch
15 vendors?   11:10:03
16   A So it would be the same answer.
17   I think you're characterizing his report.
18 I don't have his report in front of me. I don't
19 know that I can agree with your characterization.
20   As I've said previously, I know he has   11:10:18
21 talked about other switch vendors and what commands
22 they have, and I've provided a rebuttal analysis in
23 Exhibit 1539.
24   (Exhibit 1540 was marked for
25   identification and is attached hereto.)   11:10:29

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1 BY MR. SILBERT: 11:11:02
2   Q Dr. Almeroth, I've marked as Exhibit 1540
3 a copy of Dr. Black's opening report. And as a
4 frame of reference, let me direct your attention to
5 the section beginning at paragraph 199 of   11:11:20
6 Dr. Black's report.
7   A Do you have a page number?
8   Q No. I wish I did.
9   A Okay. It will just take me a second.
10   Q Yeah.   11:11:38
11   A Page 91. So this is the first paragraph
12 under the "ADTRAN CLI" section?
13   Q Yeah. That's where I was focusing you on,
14 at least to get our bearings. And feel free to scan
15 to reorient yourself to Dr. Black's report, for a   11:12:16
16 few hundred paragraphs after this, to at least,
17 let's say, 439.
18   A Okay. Before I go through all of those
19 pages --
20   Q I don't want you to read them all. I just   11:12:43
21 want you to scan them and reorient yourself to it.
22 I know you've already read it carefully.
23   Does looking at these pages refresh your
24 recollection that Dr. Black provided information in
25 his report on the use of IOS CLI elements by other   11:12:57

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1 network switch vendors?   11:13:03
2   A I think the report speaks for itself as to
3 what it includes.
4   Q Do you, in your two reports anywhere,
5 dispute the data that Dr. Black presents on the use   11:13:22
6 of Cisco CLI elements by other network device
7 vendors?
8   MR. HOLMES: Objection. Calls for a legal
9 conclusion.
10   THE WITNESS: I'm not sure exactly what   11:13:42
11 you mean by "data" and which portions you're
12 considering to be the data.
13   So for example, for ADTRAN, in
14 paragraph 199, I don't recall disagreeing with the
15 statements in that paragraph. But to the level of   11:13:58
16 whether or not I accept everything that he's
17 identified as correct, I don't recall that I've done
18 that.
19   I think my report speaks for itself, and
20 I've included opinions about how he -- at least with   11:14:14
21 regard to how he interprets the information he's
22 presented. But ultimately, I think how I've
23 rebutted these opinions is in my reports.
24 BY MR. SILBERT:
25   Q I understand -- I'm not asking you to say   11:14:35

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25 (Pages 94 - 97)

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1 that you agree with his interpretation of the data   11:14:36
2 or his opinions. I understand you disagree there.
3 But let me try to break it down.
4   In Dr. Black's report, he provides figures
5 on the number of accused CLI commands that are also   11:14:49
6 used by other network switch vendors besides Arista,
7 correct?
8   MR. HOLMES: Objection. The document
9 speaks for itself.
10   THE WITNESS: If you want to point me to a   11:15:08
11 table you're suggesting, I can certainly look at it.
12   I think ultimately, as I've testified to
13 generally about both my report and his, I think it
14 speaks for itself as to what it's including.
15 BY MR. SILBERT: 11:15:27
16   Q Okay. Could you look at paragraph 208,
17 please?
18   A Okay.
19   Q I'll start reading in the middle of the
20 paragraph. It says in Dr. Black's report, "A   11:15:39
21 detailed analysis of the overlap between the ADTRAN
22 networking equipment CLIs and Cisco CLIs is provided
23 in Appendix H.AD. As shown in that detailed
24 analysis, ADTRAN has supported at least 178 of the
25 same Cisco CLI commands that are disputed in this   11:16:02

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1 lawsuit."   11:16:05
2   Do you see that?
3   A I see what's in the report.
4   Q And did you review Appendix H.AD?
5   A Yes.   11:16:15
6   Q Did you review all the appendices to
7 Dr. Black's report?
8   A I did.
9   Q Did you review them carefully?
10   A I did.   11:16:20
11   Q You don't, anywhere in your reports,
12 dispute the statement that ADTRAN has supported at
13 least 178 of the same Cisco CLI commands that are
14 disputed in this lawsuit, do you?
15   A I don't recall that I do specifically. I   11:16:34
16 think the report speaks for itself, my report does.
17   Q As you sit here today, you're not aware of
18 anything in your reports that disputes that, are
19 you?
20   MR. HOLMES: Objection. Asked and   11:16:42
21 answered.
22   THE WITNESS: I -- as I sit here today, I
23 don't recall, but I don't have my report memorized.
24   And I would also add that to the extent
25 that I don't doesn't mean that I accept his findings   11:16:55

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1 as correct.   11:17:00
2 BY MR. SILBERT:
3   Q My question is, do you, in your reports,
4 dispute them?
5   Would you look back, please, a little   11:17:10
6 earlier in paragraph 204?
7   A Okay.
8   Q Do you see here there's a table in this
9 paragraph which Dr. Black describes as a comparison
10 of disputed Cisco command modes and prompts and the   11:17:24
11 AOS CLI command modes and prompts as of April 2003?
12   A I see that sentence in his report.
13   Q You don't, anywhere in your reports,
14 dispute that ADTRAN AOS used the CLI command modes
15 and prompts that are shown in Dr. Black's table   11:17:45
16 here, do you?
17   A I don't have my report memorized, and I
18 would just say that I think my report speaks for
19 itself.
20   Q As you sit here today, you can't point me   11:17:56
21 to any portion of your report where you dispute the
22 data that's presented here, can you?
23   A As I sit here today, no. It's a long
24 report and I'd have to look through it and see. But
25 I don't have it memorized and can't point you to   11:18:08

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1 something specific.   11:18:11
2   Q Okay. And we've been looking at examples
3 for ADTRAN, which is the first in Dr. Black's long
4 list of network switch vendors.
5   But isn't it true that the answers are the   11:18:24
6 same for every company he lists?
7   In other words, you don't, anywhere in
8 your reports, dispute the accuracy of Dr. Black's
9 statements about the number of CLI commands used by
10 other network device vendors that are at issue in   11:18:39
11 this case?
12   MR. HOLMES: Objection. Compound, vague,
13 and calls for a legal conclusion.
14   THE WITNESS: I would give similar answers
15 to what I just gave. I don't -- I think my report   11:18:50
16 speaks for itself. I don't have it memorized. It's
17 a fairly lengthy report. I have included responses
18 to his opinions. But as I sit here today, I don't
19 recall that I have questioned any of the specific
20 data. But again, I think the report speaks for   11:19:09
21 itself.
22 BY MR. SILBERT:
23   Q And is it also true that you would give
24 the same answers if I asked you whether you disputed
25 any of the information Dr. Black presents on other   11:19:20

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26 (Pages 98 - 101)

HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY

1 network switch vendors' use of CLI modes, prompts,   11:19:24
2 or responses, command responses, that are used in
3 Cisco IOS?
4   MR. HOLMES: Same objections.
5   THE WITNESS: That covers a lot of ground. 11:19:41
6 And what I would say is, I would defer to what my
7 report says.
8   I've included the opinions in my report.
9 And to the extent I haven't addressed one of the
10 particular aspects that are within the scope of your 11:19:54
11 question, it shouldn't be meant that I agree with
12 his findings.
13 BY MR. SILBERT:
14   Q I'm not -- again, to be clear, I'm not
15 asking you whether you agree with them. I'm asking 11:20:05
16 you what you've disclosed as your opinions in your
17 report.
18   Isn't it true that in your reports, you
19 don't dispute anywhere the accuracy of the data that
20 Dr. Black presents in his opening report on the 11:20:21
21 number of CLI -- and identity of CLI elements used
22 in Cisco's CLIs that are also used by other network
23 device vendors?
24   MR. HOLMES: Objection. Vague, compound.
25 The documents speak for themselves. 11:20:37

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1   THE WITNESS: I would essentially give you 11:20:40
2 the same answer that I gave to the last question.
3   I think the report speaks for itself, and
4 the point really is, even though I haven't responded
5 to his particular statements doesn't mean that I 11:20:53
6 accept his data as correct.
7 BY MR. SILBERT:
8   Q Your testimony is that you've seen no
9 evidence that other switch vendors besides Arista
10 and Huawei have copied Cisco CLI; is that right? 11:21:09
11   A I believe there's an opinion along those
12 lines. You can point me to the paragraph in my
13 report that you're referring to.
14   Q Okay. Let's take one specific example.
15 I'm looking at your opening report, which is 11:21:31
16 Exhibit 1538. Would you look, please, at
17 paragraph 97 on page 39?
18   I must have that wrong. It must be your
19 rebuttal report. Yeah, I apologize. I meant to say
20 your rebuttal report. 11:22:10
21   MR. HOLMES: Which page is that?
22   MR. SILBERT: Page 39, paragraph 97.
23   THE WITNESS: Okay.
24 BY MR. SILBERT:
25   Q Looking at the bottom of page 39, you say, 11:22:27

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1 "Dell's corporate representatives stated under oath 11:22:30
2 that Dell had not copied Cisco's IOS CLI and that he
3 was not aware of anyone else in the industry copying
4 Cisco, and that Dell has its own commands that
5 others have not used," and then you quote some 11:22:45
6 testimony on the next page there, right?
7   A I do see that.
8   Q Do you believe that it's a balanced and
9 fair appraisal of the evidence that you've reviewed
10 in the case to say that you're not aware of any 11:22:56
11 evidence that Dell has copied Cisco CLI?
12   A I think that you have to look at the
13 opinions that I've included in the middle of that
14 paragraph.
15   And what I'm saying is, I have seen no 11:23:29
16 such evidence that even comes close to this level of
17 copying with respect to HP, and then similarly for
18 Dell.
19   The analysis that I've done has been with
20 respect to Arista. And as I testified to this 11:23:43
21 morning with respect to copying and plagiarism, part
22 of what you need to do is to look at the evidence
23 beyond just the existence of similarities.
24   You can start with similarities and
25 progress from there. In the case of Arista, there 11:24:04

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1 is admissions from Arista corporate representatives 11:24:07
2 and witnesses that they copied commands,
3 documentation, command modes, prompts. The whole
4 list of things.
5   There isn't that kind of evidence for HP 11:24:25
6 and Dell. And to the extent that as one of its
7 defenses, Arista and Dr. Black want to say that Dell
8 has copied, then there would need to be some
9 additional evidence beyond just the similarities in
10 commands. 11:24:47
11   And so based on the evidence that I've
12 seen, which wasn't really the focus of my
13 investigation, to generate evidence or ask for
14 evidence that would potentially require subpoenaing
15 Dell and HP, there isn't any such evidence of 11:25:04
16 copying.
17   And to the extent Dr. Black makes an
18 argument that there is copying based on
19 similarities, I'm saying in paragraph 97 that it
20 doesn't rise to the level of evidence with respect 11:25:23
21 to Arista's copying.
22   Q Would you please look at Exhibit I to the
23 Black report, Exhibit 1540?
24   You reviewed this exhibit carefully before
25 you prepared your rebuttal report, didn't you? 11:25:53

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27 (Pages 102 - 105)

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1 BY MR. SILBERT: 11:41:07
2   Q Have you seen statements by Dell to the
3 effect that Dell uses a, quote, industry standard
4 CLI?
5   A I don't recall, sitting here now. There's 11:41:18
6 been a lot of evidence in the case. I don't have it
7 memorized.
8   If there's a document to that effect, I
9 can certainly take a look at it. To the extent it's
10 been addressed or discussed in any of the reports,   11:41:31
11 then we can go over those opinions.
12   Q Have you seen statements by Brocade that
13 Brocade uses a, quote, industry standard CLI?
14   A Again, it would be the same answer.
15   I don't have all the documents memorized.   11:41:47
16 And to the extent any have been identified or
17 presented, then I would have responded to those in
18 my reports.
19   Q You say in your rebuttal report that
20 Arista and Huawei are the only two companies Cisco   11:42:03
21 is/was aware of that were infringing Cisco's
22 copyrighted works; is that correct?
23   A You would have to point me to that part of
24 the report.
25   Q Paragraph 168 on page 85 of your rebuttal   11:42:20

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1 report.   11:42:24
2   A Okay.
3   Q Do you see the statement I'm referring to?
4   A I do.
5   Q Is it your testimony, as an expert on   11:42:58
6 behalf of Cisco, that Cisco is not aware that Dell
7 infringes Cisco's copyrighted works?
8   A My testimony is exactly what it says in
9 paragraph 168, that it's what Cisco pointed out in
10 its interrogatory response.   11:43:16
11   Q And what Cisco pointed out in its
12 interrogatory response, according to you, is that
13 Arista and Huawei are the only two companies that
14 Cisco is aware of that is/was infringing Cisco CLI?
15 Or infringing its copyrighted works?   11:43:37
16   A That's what the sentence says.
17   Q Knowing what you know about Dell CLI, you
18 don't have any reason to believe that Dell is
19 infringing Cisco's copyrighted works, either,
20 correct?   11:43:49
21   MR. HOLMES: Objection. Calls for
22 speculation, calls for a legal conclusion.
23   THE WITNESS: Knowing what I know is not
24 sufficient to render an opinion one way or the
25 other. There really isn't information -- sufficient 11:44:02

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1 information to draw a conclusion.   11:44:07
2   The conclusions that I've offered with
3 respect to Dell are based on -- are stated in the
4 report and are based on the evidence that exists for
5 Dell.   11:44:19
6 BY MR. SILBERT:
7   Q Your testimony as an expert on behalf of
8 Cisco is that Cisco isn't aware that D-Link, which
9 uses over 300 of just the commands at issue in this
10 case, along with other CLI elements, is infringing   11:44:32
11 Cisco's copyright?
12   MR. HOLMES: Objection. Foundation,
13 misstates the testimony, misstates the document.
14   THE WITNESS: I'm not sure I understand
15 the question.   11:44:45
16 BY MR. SILBERT:
17   Q Your testimony -- strike that.
18   Dr. Black presents information about
19 D-Link's CLI and the overlaps between D-Link and
20 Cisco in his expert report, right?   11:45:00
21   A I think his expert report speaks for
22 itself.
23   Q And you, in your expert reports, haven't
24 disputed the accuracy of the data that he presents
25 about the D-Link CLI, correct?   11:45:09

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1   A I believe I've answered that numerous --   11:45:15
2 question numerous times. It's going to be the same
3 answer I gave before.
4   Q Okay.
5   A I think my report speaks for itself. And   11:45:22
6 to the extent I haven't disagreed with some
7 particular aspect doesn't mean that I've accepted
8 what he said as correct.
9   Q And your testimony, as an expert on behalf
10 of Cisco, is that Cisco is not aware that D-Link is   11:45:36
11 infringing Cisco's copyrighted works?
12   A Again, I would refer to what I've said in
13 paragraph 168, that at least based on its
14 interrogatory responses, that Arista and Huawei are
15 the only two companies Cisco is or was aware of that 11:45:58
16 were infringing Cisco's copyrighted works.
17   MR. HOLMES: I object to that question as
18 calls for speculation and a legal conclusion.
19   MR. SILBERT: Okay. You know, I'm going
20 to switch gears, so why don't we break for lunch   11:46:11
21 now, if that's okay.
22   THE VIDEO OPERATOR: Going off the record,
23 the time is 11:47 a.m.
24   (Recess, 11:47 a.m. - 12:44 p.m.)
25   THE VIDEO OPERATOR: Back on the record.   12:44:04

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31 (Pages 118 - 121)

1 same look and feel scientifically falsifiable?   12:56:30
2   MR. HOLMES: Same objections.
3   THE WITNESS: I suspect that there are
4 situations where you can look at two interfaces and
5 determine that they don't have the same look and   12:56:41
6 feel.
7   As an example, if you had a GUI versus a
8 CLI, I think that it would be difficult to conclude
9 that they have the same look and feel.
10   There are other aspects of the CLI that   12:56:56
11 one could identify as potentially distinctive. They
12 have different outputs. They use different
13 commands, command structures, or something.
14   I think that you could certainly make an
15 argument that the look and feel of two interfaces   12:57:14
16 was not the same.
17 BY MR. SILBERT:
18   Q I understand you can make arguments. We
19 get paid to do that.
20   But my question to you is, is the   12:57:29
21 assertion that two CLIs have the same look and feel
22 scientifically falsifiable?
23   MR. HOLMES: Same objections. Asked and
24 answered.
25   THE WITNESS: So if my previous answer   12:57:44

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1 wasn't answering the question to your expectation,   12:57:45
2 then I'm not sure I understand what "scientifically
3 falsifiable" mean.
4 BY MR. SILBERT:
5   Q Can it be proven wrong based on objective   12:57:56
6 criteria?
7   A You've introduced a concept of proof, and
8 I understand that there are different burdens for
9 proof: More likely than not, clear and convincing.
10   It seems that what you're asking about is   12:58:27
11 for, for example, an expert to make a determination.
12   I believe an expert could make a
13 determination and offer the opinion using some sort
14 of methodology that two interfaces were -- had the
15 same look and feels versus not.   12:58:47
16   Q Is the determination of whether two CLIs
17 have the same look and feel an objective
18 determination or a subjective determination?
19   MR. HOLMES: Objection. Vague, calls for
20 a legal conclusion.   12:59:02
21   THE WITNESS: I'm not sure that I could
22 characterize it one way or another. I think that as
23 with just about anything, two experts could look at
24 the same evidence and disagree for their own
25 specific reasons.   12:59:26

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1   I don't know if that makes it subjective,   12:59:27
2 or to the extent that it is subjective, whether,
3 really, just about anything is not subjective.
4   I've offered the opinions that I've
5 offered in the report. And whether somebody wants   12:59:41
6 to argue that they're subjective or objective, I
7 guess that's their own subjective analysis.
8 BY MR. SILBERT:
9   Q What are the objective criteria that
10 determine whether two CLIs have the same look and   12:59:56
11 feel?
12   A I think I've answered that question.
13   The way to look at the criteria would be
14 to assess its input mechanisms versus its output
15 mechanisms, and either independently or together,   13:00:14
16 perform an assessment of those aspects of the
17 interface.
18   And then within those aspects of the
19 interface, you can really use a variety of both
20 objective and subjective criteria, if I'm   13:00:32
21 understanding how you're using the terms correctly.
22   You can do things like a count of commands
23 that are the same, similarities in the output, the
24 structure of the commands. Any one or more of those
25 things, depending on their similarity, would   13:00:55

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1 contribute to the overall conclusion of whether two   13:00:58
2 interfaces have the same look and feel.
3   Q Is there a minimum number of commands that
4 need to be the same for two CLIs to have the same
5 look and feel?   13:01:11
6   A I don't think there has to be a minimum
7 number. I think you have to consider all of the
8 evidence. I don't think there's a threshold
9 quantity.
10   I think part of the analysis is to   13:01:23
11 determine what the commands are and look at the
12 similarities in commands. There might be other
13 considerations like the similarities in command
14 hierarchies, the similarity in output.
15   Certainly there might be a hypothetical   13:01:42
16 situation where many of the commands are similar,
17 but the output is so distinctively different that it
18 creates something that's different with respect to
19 the look and feel.
20   I mean, it seems that part of the analysis   13:01:56
21 has to be based on the evidence that's available to
22 do the analysis.
23   Q Could two CLIs have the same look and feel
24 if they have no overlapping multiword commands?
25   MR. HOLMES: Objection. Calls for a   13:02:11

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34 (Pages 130 - 133)

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1 hypothetical.   13:02:13
2   THE WITNESS: As a hypothetical, I'm
3 always adverse to saying that it's not possible.
4   It might be more difficult in the case
5 where there's no overlapping commands. I don't know   13:02:28
6 what other aspects of the system might contribute to
7 a conclusion that there's the same look and feel.
8   If it's a graphical interface and it's
9 identical but the commands have slightly different
10 names, or the output is identical -- and the output   13:02:49
11 is identical, maybe those -- those considerations
12 have an impact on whether it's the same look and
13 feel.
14 BY MR. SILBERT:
15   Q Do two CLIs need to have the same modes   13:03:02
16 and prompts for them to have the same look and feel?
17   MR. HOLMES: Objection. Calls for a legal
18 conclusion, incomplete hypothetical.
19   THE WITNESS: I think it's a similar
20 answer to what I just said. I think it depends.   13:03:15
21 You have to look at the evidence that's presented in
22 order to make a determination. It depends on the
23 other factors I've talked about and the degree to
24 which the other factors are present. It really just
25 depends. It might be, it might not be.   13:03:41

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1 BY MR. SILBERT: 13:03:43
2   Q When you refer to "other factors" that are
3 talked about, some of the other factors you talked
4 about is, other characteristics of the interface
5 were the use of prefixes; is that correct?   13:03:58
6   A I did mention the context of a prefix in a
7 previous answer.
8   Q And what did you mean when you referred to
9 the use of prefixes as something that affects the
10 look and feel of a CLI?   13:04:16
11   A Sure. So one example might be in, say,
12 Cisco and Arista where you're able to enter the
13 prefix "EN" for enable instead of entering the full
14 command, so the design concept within both user
15 interfaces where you're able to enter just enough of   13:04:32
16 the command so that the CLI can distinguish,
17 disambiguate between commands.
18   So since there's no other command that
19 begins with EN, that EN is sufficient to notify the
20 system that the user wants to go into privileged   13:04:52
21 mode.
22   And so that concept of entering a minimum
23 syntactic length to disambiguate over other commands
24 is a characteristic that's common to Cisco and
25 Arista, and is a factor that I've considered in   13:05:11

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1 determining the similarity between look and feel.   13:05:14
2   Q To your knowledge, was that characteristic
3 common to CLIs that existed before both Cisco and
4 Arista?
5   A As to your question of "common," I'm not   13:05:29
6 sure what -- how prevalent it would need to be in
7 order to make it common.
8   And then you've also identified before
9 Cisco and Arista CLIs, which are two different
10 dates. I'm not sure which date you're intending.   13:05:45
11   Q To your knowledge, did the TOPS-20 CLI
12 allow a user to enter prefixes that would be
13 expanded to complete commands or command words?
14   MR. HOLMES: Objection. Vague as to time,
15 foundation.   13:06:05
16   THE WITNESS: I have some recollection
17 that -- something around that topic. I'd have to go
18 back and look at the reports to see if it did or
19 not.
20 BY MR. SILBERT: 13:06:25
21   Q You also mentioned tab expansion as
22 something that can affect the look and feel of a
23 CLI; is that right?
24   A Again, I offered a whole list of examples.
25 It could be something that one could use   13:06:39

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1 consistently across interfaces that might be a   13:06:44
2 consideration. Not necessarily so, but maybe.
3   Q Are the tab expansion characteristics in
4 Cisco's and Arista's CLI similar?
5   A I don't recall. I'd have to go back and   13:06:58
6 check to the extent that they're there and how
7 similar they are. I don't have that detail of both
8 of the CLIs memorized.
9   Q Is the availability of context-sensitive
10 help a characteristic that affects a CLI's look and   13:07:20
11 feel?
12   MR. HOLMES: Objection. Vague.
13   THE WITNESS: I'm not sure exactly what
14 you mean by "context-sensitive help."
15 BY MR. SILBERT: 13:07:38
16   Q For example, pushing "question mark," and
17 the CLI interface will return information that it
18 thinks is relevant based on the particular context
19 in which you pushed the question mark.
20   A It's not clear from your question if   13:07:53
21 you're entering a question mark after you've entered
22 a portion of a command, and then you want to see,
23 for example, the options that are available in the
24 subtree of that command.
25   Q Sure. Why don't you take that example.   13:08:05

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1 transcript as highly confidential, outside counsel   17:43:10
2 only.
3   (TIME NOTED: 5:43 p.m.)
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1   I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:
4   That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.
12   Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [X] was [ ] was not requested.
16   I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.
19   IN WITNESS WHEREOF, I have this date
20 subscribed my name.
21
22 Dated: 6/30/2016
23
24   <%signature%>
25   CARLA SOARES
           CSR No. 5908

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7
8   I, KEVIN C. ALMEROTH, do hereby declare
9 under penalty of perjury that I have read the
10 foregoing transcript; that I have made any
11 corrections as appear noted, in ink, initialed by
12 me, or attached hereto; that my testimony as
13 contained herein, as corrected, is true and correct.
14   EXECUTED this _____ day of _____,
15 2016, at _____, _____.
16   (City)   (State)
17
18
19   _____
20   KEVIN C. ALMEROTH
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